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Paper No. 17  
RLS/CV

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Apacer Technology, Inc.

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Serial No. 75/375,082

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E. Lynn Perry of Townsend and Townsend for Apacer  
Technology, Inc.

Howard Smiga, Trademark Examining Attorney, Law Office 102  
(Thomas V. Shaw, Managing Attorney).

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Before Simms, Hohein and Rogers, Administrative Trademark  
Judges.

Opinion by Simms, Administrative Trademark Judge:

Apacer Technology, Inc. (applicant), a Taiwanese  
corporation, has appealed from the final refusal of the  
Trademark Examining Attorney to register the mark APACER  
for the following goods:

Computer hardware, namely, computer  
memories, RAM (random access memory),  
transistors, integrated circuits,  
semiconductors, microcircuits, silicon  
transistor devices, electronic  
circuits, semiconductor chips,  
semiconductor devices, VLSI (very large

scale integrated circuit), microprocessor chips, circuit boards, add-on boards, interface cards, PCMCIA (Personal Computer Memory Card International Association) cards, printed circuit boards, and computer peripherals; blank compact discs, tapes, and drives, and blank CD-ROMs, in International Class 9.<sup>1</sup>

The Examining Attorney has refused registration under Section 2(d) of the Act, 15 USC §1052(d), on the basis of Registration No. 619,843, issued January 24, 1956 (twice renewed) for the mark PACER for electrical capacitors. The Examining Attorney and applicant have filed briefs but no oral hearing was requested.

In arguing that confusion is likely as a result of use of these marks, the Examining Attorney argues that there is only a slight difference in pronunciation of the two marks. Indeed, the Examining Attorney argues that the marks are phonetic equivalents. Further, the Examining Attorney maintains that it is likely that consumers will view applicant's mark as "a PACER." Concerning the goods, the Examining Attorney argues that registrant's "electrical capacitors" must be construed broadly to include all types of capacitors including those which may be used in applicant's computer hardware products. The Examining

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<sup>1</sup> Application Serial No. 75/375,082, filed October 17, 1997, claiming use and use in commerce since July 29, 1997.

Attorney contends that registrant's capacitors could be components of applicant's RAM (random access memory). In support of this proposition, the Examining Attorney has made of record a 1998 Electronic Engineers Master Catalogue showing that capacitors can be used in computer circuits, integrated circuits, transistors, printed circuit boards, etc.<sup>2</sup> It is the Examining Attorney's position that purchasers of capacitors are likely to include manufacturers of computer hardware, including RAM. The Examining Attorney maintains that the respective goods, therefore, may travel in the same channels of trade to the same class of potential purchasers. Finally, the Examining Attorney contends that even sophisticated or knowledgeable purchasers are not immune to confusion.

Applicant, on the other hand, argues that confusion is unlikely because of the differences in sound, appearance and meaning of the marks, differences in the goods and the sophistication of potential purchasers. With respect to the marks, applicant argues that registrant's mark PACER suggests that registrant's capacitors are used to "pace"

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<sup>2</sup> The Examining Attorney also relies upon the definition of "capacitor" from The Computer Glossary (7<sup>th</sup> ed.):

an electronic component that holds a charge. It comes in varying sizes for use in power supplies to the tiny cells in dynamic RAM chips.

the flow of electric current. Applicant's mark, according to applicant's attorney, is unlike registrant's mark because it is not a real word. Moreover, applicant's mark suggests that consumers are keeping "apace" of computer technological developments. If anything, consumers will see applicant's mark as a variation of the word "apace."

With respect to the goods, prospective purchasers and channels of trade, applicant contrasts registrant's electrical circuit product with its computer-related goods designed to enhance computer memory.

Electrical capacitors and computer memory hardware are not interchangeable for the functions they perform, nor are they sufficiently related to create a likelihood of confusion. Electrical capacitors are likely to be used by electricians and by manufacturers of electronic products. In contrast, the computer hardware to enhance memory sold by applicant is generally purchased by companies assembling computers comprised of hardware and software from different manufacturers. Due to the differences in the customers at which they are aimed, Applicant's goods and Registrant's goods travel in different channels of trade. The context in which these marks will be seen, and the goods on which they are used, are so different that it is extremely unlikely that a consumer would believe that they originated from the same source. The likely-to-continue trade channels do not converge, which negates the likelihood that consumers will be confused.

Applicant's brief, p.7. Expounding on the differences in purchasers, applicant argues, brief, p.8:

The relevant purchasers of Applicant's and the cited goods are clearly distinguishable. Applicant's goods are purchased by specialized buyers for the companies assembling computers. These buyers are not likely to purchase electrical capacitors separately to produce RAM themselves, since RAM is only produced by professional RAM manufacturers. The RAM purchased by Applicant's customers would already contain all of its components, including any electrical capacitor, and would be sold under Applicant's (or another RAM manufacturer's) marks. Applicant's customer simply would not have an opportunity to be "confused" about the mark used for a component of RAM.

Finally, applicant argues that computer manufacturers are usually sophisticated professionals who use a higher level of care in purchasing hardware components and are, therefore, not likely to be confused.

Upon careful consideration of this record and the arguments, we conclude that confusion is not likely.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood-of-confusion issue. In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Two key considerations in this case are the similarities of the

marks and the similarities of the goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). The possible differences in the channels of trade and the sophistication of the potential purchasers are also important factors in this case.

With respect to the marks, there are, of course, some differences--PACER vs. APACER. The registered mark is an actual word whereas applicant's mark is coined. The registered mark has clear significance, whereas the meaning of applicant's mark is more nebulous. Also, applicant's mark begins with an "A", which is of some significance in making a commercial impression. The marks, therefore, have some differences.

While the goods are not identical, there is some evidence that capacitors, circuit boards and integrated circuits could all be produced by the same entity. In this regard, the Examining Attorney has introduced limited evidence showing that the same company offers for sale some or all of these products.

However, we believe that there is insufficient evidence that these goods will be sold to the same class of purchasers. While the Examining Attorney argues that the respective goods travel in the same channels of trade to the same class of potential purchasers, it seems to us that

applicant's position is, on the whole, more persuasive. That is to say, purchasers who buy registrant's electrical capacitors--perhaps electricians and manufacturers of other electronic components--are not likely to be the same purchasers who buy computer hardware products, such as manufacturers who assemble computers from parts already assembled. If this is the case, and the Examining Attorney has not introduced any evidence to the contrary, it would appear that purchasers of applicant's computer hardware products are not likely to be exposed to registrant's mark and goods.

Moreover, even if it were the case that one manufacturer would buy both registrant's electrical capacitors and applicant's computer hardware products, this fact alone does not necessarily establish relatedness or demonstrate that confusion is likely. See, for example, *Electronic Design & Sales Inc. v. Electronic Data Systems Corp.*, 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992) and *Electronic Data Systems Corp. v. EDSA Micro Corp.*, 23 USPQ2d 1460 (TTAB 1992). More importantly, however, registrant's electrical capacitors and applicant's specific computer hardware products are likely to be purchased, typically in bulk, by relatively careful, sophisticated purchasers, such as manufacturers. The relative

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sophistication of those purchasers would tend to avoid any likely confusion.

Because these goods are likely to travel in different channels of trade to different classes of purchasers, and, in any event, are likely to be purchased by sophisticated purchasers, and in view of the differences in the marks, we believe that confusion is unlikely, at least on this record.

Decision: The refusal of registration is reversed.